

# Virginia Administrative Code

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## CHAPTER 670

### VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES

#### **9VAC25-670-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding

mosses and lichens. This vegetation is present for most of the growing season in most years and are usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Greater than one acre" means more than 1.00 acre (43,560 square feet).

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in §62.1-44.15:20 A of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that: (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.

"Less than one-half of an acre" means 0.49 acre (21,779 square feet) or less.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs,

young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), and 33 CFR 325.3(b) that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its

preconstruction conditions, contours, or elevations, such that previous functions and values are restored.

"Up to 300 linear feet" means >0.00 to 300.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet" means >0.00 to 1500.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

**9VAC25-670-20. Purpose; delegation of authority; effective date of VWP general permit.**

A. The purpose of this regulation is to establish VWP General Permit Number WP2 under the VWP permit program regulation to govern permanent and temporary impacts related to the construction and maintenance of utility lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. Authorization, authorization with conditions, or denial by the board shall constitute the VWP general permit action. Each VWP general permit action shall follow all provisions in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

B. The director, or his designee, may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on August 1, 2006, and will expire on August 1, 2016.

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9VAC25-670-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for seven years.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

**9VAC25-670-30. Authorization to impact surface waters.**

A. Any person governed by this VWP general permit is authorized to permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities, provided that:

1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.
2. The applicant remits the required application processing fee in accordance with 9VAC25-20.
3. The applicant complies with the limitations and other requirements of 9VAC25-670-100.
4. The applicant receives approval from the Virginia Department of Environmental Quality.
5. The applicant has not been required to obtain a VWP individual permit under the VWP permit regulation (9VAC25-210) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.
6. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.
  - a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require a VWP individual permit for the project.

b. Where an access road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

7. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

8. When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a 20-foot wide permanently maintained corridor. Compensation shall not be required for impacts within the 20-foot wide portion of permanently maintained corridor. For example, with a 50-foot wide, permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

9. Compensation for unavoidable impacts is provided in accordance with 9VAC25-670-70.

B. Activities that may be authorized under this VWP general permit include the following:

1. The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours.

2. The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line.

3. The construction or maintenance of foundations for overhead utility line towers, poles or anchors, provided the foundations are the minimum size



necessary and separate footings for each tower leg (rather than a single pad) are used where feasible.

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-670-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

D. Receipt of this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.

F. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued §401 certification existing as of August 1, 2006, shall constitute coverage under this VWP general permit unless a state program general permit is approved for the covered activity or impact. Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9VAC25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.

G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require

individual applications and VWP individual permits rather than approving coverage under this VWP general permit.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

#### **9VAC25-670-40. Exceptions to coverage.**

A. Authorization for coverage under this VWP general permit will not apply in the following areas:

1. Wetlands composed of 10% or more of the following species (singly or in combination) in a vegetative stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages shall be based upon either basal area or percent areal cover in the area of impact.
2. Surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. Authorization for coverage under this VWP general permit cannot be used in combination with authorizations for coverage under other VWP general permits in order to impact greater than one acre of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. More than one

authorization for coverage under this VWP general permit for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The board shall deny coverage under this VWP general permit to any applicant for activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. This VWP general permit may not be used for:

1. Construction of a stormwater management facility.
2. Any water withdrawal activities.
3. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry.
4. Dredging or maintenance dredging.

5. The taking of threatened or endangered species in accordance with the following:

a. As pursuant to §29.1-564 of the Code of Virginia, the taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in §29.1-568.

b. As pursuant to §29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in §29.1-568 of the Code of Virginia.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

#### **9VAC25-670-50. Notification.**

A. Notification to the board is not required for utility line activities that have only temporary impacts provided the impacts do not involve mechanized land clearing of forested wetlands.

B. Notification to the board will be required prior to commencing construction, as follows:

1. An application for authorization of proposed, permanent nontidal wetland or open water impacts greater than one-tenth of an acre, or for proposed permanent nontidal stream bed impacts greater than 300 linear feet, shall include all information pursuant to 9VAC25-670-60 B. Compensatory mitigation may be required for all permanent impacts in accordance with Parts I, II, and III of this VWP general permit regulation. All temporary impacts shall be restored to preexisting conditions, as per Parts I, II, and III of this VWP general permit regulation.

2. An application for the authorization of proposed, permanent nontidal wetland or open water impacts up to one-tenth of an acre, or of proposed, permanent nontidal stream bed impacts up to 300 linear feet, shall be submitted as follows:

- a. For projects that are not subject to subdivision 2 b of this subsection, the application shall include the information required by subdivisions 1 through 9, 13, 15, 20, and 21 of 9VAC25-670-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.

- b. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, restrictive covenant, or other land use

protective instrument (hereafter protected areas), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-670-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts, regardless of amount. All temporary impacts, regardless of amount, shall be restored to preexisting conditions, as per Parts I and III of this VWP general permit regulation.

C. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) shall serve as an application under this regulation.

D. The board will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist DEQ in reviewing and processing the application.

Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

## Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

### **9VAC25-670-60. Application.**

A. Applications shall be filed with the board, as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-670-50 for a VWP General Permit WP2 for impacts to surface waters resulting from activities of utilities, which will serve as a notice of intent for coverage under this VWP general permit.
2. The VDOT may use its monthly IACM process for submitting applications.

B. The required application shall contain the following information, if applicable to the project:

1. The applicant's name, mailing address, and telephone number and, if applicable, fax number.
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address.
3. The existing VWP permit number (if applicable).
4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.
5. The name of the water body or water bodies or receiving stream, as applicable.
6. The hydrologic unit code (HUC) for the project area.
7. The name of the city or county where the project is located.

8. Latitude and longitude (to the nearest second) from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.

10. (Reserved.)

11. Project plan view. Plan view sketches shall include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. In addition, cross-sectional or profile sketches with the above information may be required to detail impact areas.

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width), the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects) and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.



14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats.

15. A description of the specific on-site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.

16. A conceptual plan for the intended compensation for unavoidable impacts, including:

- a. For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland acreage and function; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; a map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a

conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude to the nearest second; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund, shall submit an evaluation of the feasibility of on-site compensation. If on-site compensation is practicable, applicants shall provide documentation as to why the proposed off-site compensation is ecologically preferable. The evaluation shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

d. Applicants proposing compensation involving contributions to an in-lieu fee fund shall state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. Wetland types shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site.

19. The appropriate application processing fee for a VWP general permit in accordance with 9VAC25-20. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee.

20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.

21. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The application shall be signed in accordance with 9VAC25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an

authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation.

E. Incomplete application. Where an application is incomplete, the board shall require the submission of additional information and may suspend processing the application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in reports to the board, he shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application, but shall not require an

additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board after 180 days from the date that the original permit application was received by the board. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

#### **9VAC25-670-70. Compensation.**

A. In accordance with 9VAC25-670-50 B, compensatory mitigation may be required for all permanent, nontidal surface water impacts. All temporary, nontidal surface water impacts shall be restored to preexisting conditions.

B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable,

then such proposal may be deemed appropriate for compensation of project impacts.

C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:

1. Wetland creation.
2. Wetland restoration.
3. The purchase or use of credits from a mitigation bank, pursuant to §62.1-44.15:23 of the Code of Virginia.
4. A contribution to an approved in-lieu fee fund.
5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.
6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with 9VAC25-210-116 A.
7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.

D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:

1. Stream channel restoration or enhancement.
2. Riparian buffer restoration or enhancement.
3. Riparian buffer preservation, when consistent with 9VAC25-210-116 A.
4. A contribution to an approved in-lieu fee fund.
5. The purchase or use of credits from a mitigation bank, pursuant to §62.1-44.15:23 of the Code of Virginia.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.

F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of §62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.

G. Compensation for unavoidable permanent wetland impacts shall be provided at the following minimum compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

H. Compensation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.

I. Compensation for permanent open water impacts other than to streams may be required at a 1:1 replacement to impact ratio, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment.



J. Compensation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources from significant impairment.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

#### **9VAC25-670-80. Notice of planned changes.**

A. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet,

and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.

D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in 9VAC25-210-116 E are met.

F. Authorization under the VWP general permit may be modified after issuance for typographical errors.

G. A notice of planned change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

H. In no case can this authorization be modified to exceed the general permit threshold for use.

I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

#### **9VAC25-670-90. Termination of authorization by consent.**

When all permitted activities requiring notification under 9VAC25-670-50 B and all compensatory mitigation requirements have been completed, or if the authorized impacts will not occur, the permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent

shall constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination of authorization on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit

authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006.

#### **9VAC25-670-95. Transition.**

A. All applications received on or after August 1, 2006, will be processed in accordance with these new procedures.

B. VWP general permit authorizations issued prior to August 1, 2006, will remain in full force and effect until such authorizations expire, are revoked, or are terminated.

C. Notices of planned change and all other types of notification that are received by the board prior to August 1, 2006, will be processed in accordance with the VWP general permit regulation in effect at that time. Notices of planned change and all other types of notification to the board that are received on or after August 1, 2006, will be processed in accordance with these new procedures.

#### Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 22, Issue 21, eff. August 1, 2006.

#### **9VAC25-670-100. VWP general permit.**

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP2

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES  
AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL  
ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION  
COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA

WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER  
CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Compensation, Monitoring, and Reporting, and Part III-Conditions Applicable to All VWP Permits, as set forth herein.

\_\_\_\_\_  
Director, Department of Environmental Quality

\_\_\_\_\_  
Date

## Part I. Special Conditions.

### A. Authorized activities.

1. This permit authorizes permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.
2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-670-80 or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.
5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring



requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way

limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity.

Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities unless allowed by this permit authorization.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

#### D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.
2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

#### E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.
2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-670-70.

3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.

4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.

5. All aspects of the compensation plan shall be finalized, submitted and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.

6. The final wetlands compensation plan shall include:

- a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;
- b. Location map, including latitude and longitude (to the nearest second) at the center of the site;
- c. Summary of the type and acreage of the existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;
- d. Grading plan with existing and proposed elevations at one-foot or less contours;

- e. Schedule for compensation site construction, including sequence of events with estimated dates;
- f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;
- g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
- h. Design of water control structures;
- i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;
- j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
- k. Erosion and sedimentation control plan;
- l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;
- m. A discussion of structures and features considered necessary for the success of the site;
- n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;
- o. Site access plan;



- p. The location and composition of any buffers; and
- q. The mechanism for protection of the compensation areas.

7. The final stream compensation plan shall include:

- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;
- b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
- c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
- d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
- e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;
- f. Riparian buffer plantings, including planting scheme, species, buffer width;
- g. Livestock access limiting measures, to the greatest extent possible;
- h. A site access plan;
- i. An erosion and sedimentation control plan, if appropriate;

j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of a their presence, methods for removal, and the control of any such species;

k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;

l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;

m. The mechanism for protection of the compensation area; and

n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.

8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters within the compensation site boundary or

boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or any equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of survey or final compensation plan approval.

10. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).

12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetland or stream compensation plan(s).

13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may

include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:

- a. Species composition shall reflect the desired plant community types stated in the final wetlands compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.
- b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant

stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.

17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.

18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for

DEQ approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

20. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

**B. Impact site construction monitoring.**

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.

b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.

c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.

2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of

the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

#### C. Wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of



completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may

request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Stream compensation, restoration and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed.

Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

#### E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place. The reports shall include the following, as appropriate:

a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.

b. Photographs labeled with permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which

case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.

a. All wetland compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration

activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) A summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by DEQ in the final compensation plan.

7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.



9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

### Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and, thereby, constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general

permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.
2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.
3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within the 15 days.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in

writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.

2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

3. There is a change in the project plans that does not result in a change in project impacts.

4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-116 E.

5. Typographical errors need to be corrected.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public

notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-670-50 B and all compensatory mitigation have been completed or when the authorized impacts do not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking

and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;



- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
- 2. Excavate in a wetland;
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after October 1, 2001, conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

Statutory Authority

§62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

#### Historical Notes

Derived from Virginia Register Volume 17, Issue 22, eff. October 1, 2001; amended, Virginia Register Volume 21, Issue 8, eff. January 26, 2005; Volume 22, Issue 21, eff. August 1, 2006; Volume 24, Issue 9, eff. February 6, 2008.

#### FORMS

Department of Environmental Quality Water Division Permit Application Fee (eff. 7/04).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 10/04).

Joint Permit Application for Projects in Tidewater, Virginia (eff. 10/04).

Virginia Department of Transportation Inter-Agency Coordination Meeting Joint Permit Application (eff. 10/02).

#### DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

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